PATENT
Attorney Docket No. 001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

William Wanker

Serial No.: 09/290,006

Filing Date: April 11, 1999

For: CUSTOMIZABLE ELECTRONIC
COMMERCE SYSTEM AND METHOD

Examiner: Nguyen, T.

Group Art Unit: 2172

RESPONSE TO THIRD OFFICE ACTION

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Applicant respectfully responds to the third Office Action mailed on April 24th, 2002.
This response was mailed by first class mail on September 11, 2002. A Petition to Extend
the time to respond is attached.

Claims 1-35 are pending in the application.

RESPONSE

The third Office Action mailed on April 24th, 2002 rejected claims 1-35 under 35
U.S.C. §102(e) as being unpatentable over U.S. Patent No. 5,991,739 issued to Cupps et al.
Applicant traverses this rejection.

As stated in the Response to the first Office Action, and in the Response to the
Second Office Action, the present invention provides a means for a consumer to rank

merchants based upon a customizable weighting system. Applicant believes this invention is important in that it provides the consumer with the ability to give different properties of a merchant a weighting most closely approximating the priority the consumer places on such properties. The present invention does away with the single property ranking of current merchant ranking systems (which typically rank only by price or some other property) by having different weighting factors for different types of merchant properties. The weightings are then used to determine the merchant's rank. For example, a consumer may consider security and on-time delivery to be more important properties than price. The present invention provides for using different weighting factors for different properties in calculating a merchant ranking. Thus, a merchant with a great price but below average security or on-time delivery would rank below a merchant with an average price but excellent security and on time delivery, in accordance with the consumer's priorities. This is recited in the claims, such as Claim 1, where the system is "receiving a set of weighting factors..." and "ranking merchants based on the aggregate of the weighting factors..."

In both the first and second Office Actions the cited prior art failed to disclose allowing a consumer to rank different merchants. Additionally, the cited prior art in the first two Office Actions failed to show any use of different weighting factors applied to multiple properties in ranking different merchants. None of the cited references allowed a consumer the ability to specify, modify or use different weighting factors to approximate their priorities in ranking merchants.

The pending claims have not been amended in any prior response, with only claims 14-35 being added in the first Response.

The third Office Action misconstrues the claims pending in the present application. The third Office Action recites as part of Claim 1 a "means for applying screening factors to the retrieved merchant and product information to remove those merchants from the ranking with correspond to the screening criteria [in order for the server to return the best results, the server has to calculate by using some type of criteria or weighting factor](*sic*)." (3rd Office

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Action, Page 3, lines 2-6.) The third Office Action cites col. 7, line 65 to col. 8, line 16 of Cupps to support this interpretation of Cupps. Even if this is a fair and accurate statement of the Cupps disclosure (*which Applicant also takes issue with below*), it *is not* a fair and accurate statement of Claim 1. Claim 1 *does not* claim screening factors used to remove merchant's from the ranking as the third Office Action contends. Claim 10, however, does claim the use of screening factors ("means for applying screening factors…to remove…merchants from the ranking"), in addition to the use of weighting factors ("means of calculating a merchant aggregate value from the application of the weighting factors; and means for generating a ranking based on the merchant aggregate value") to determine a ranking. By the example of Claim 10, it is clear that screening factors *are not* equivalent to weighting factors, as used in the present application. As used within the present application, screening factors *eliminate* merchants from the ranking if the property of the merchant is contrary to the wishes of the consumer, as reflected in the screening factors. By contrast, a weighting factor changes the relative weight given to a property of a merchant in determining a ranking. The property of the merchant, and the merchant, remain in the ranking. Weighting factors *do not eliminate* merchants from the ranking. To the contrary, weighting factors determine the relative importance of the corresponding property of the merchant in determining the merchant's position within the ranking. It is nonsensical to assert that applying a weighting factor to information about a merchant to determine that merchant's ranking is equivalent to elimination based on a criteria. The rejection of claims 1, 10 and 14 fails as it mischaracterizes these claims.

Additionally, the Cupps reference does not disclose the use of weighting factors applied to merchant properties to determine a ranking of merchants. [The third Office Action gives away the lack of support in Cupps when it guesses that "in order for the server to return the best results, the server has to calculate by using *some type* of criteria or weighting factor" (emphasis added).] Col. 7, line 65 to col. 8, line 16 of Cupps is a description of using a geocode procedure to match a vendor. The use of geocode procedures to screen vendors is

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well know, and is even included in the present application at page 14 which describes "the system applies a filter to screen any merchants not meeting any selected criteria. Examples of screening information includes...location..." (Application, page 14, lines 13-17.) As described in Cupps, geocoding screens merchants to determine whether they match the desired location. Merchants who do not match the desired location ("subgrid sizes") are *eliminated* from the ranking. The geocode procedure in Cupps screens merchants (i.e removes those merchants from the ranking) who do not provide delivery to the location of the consumer. Cupps goes on to elaborate (col. 8, lines 7-16) on the ways in which the goecoding procedure can be modified, which included "modify the present invention to accommodate subgrid sizes." Thus, Cupps describes a screening procedure to *eliminate* merchants from the ranking based on location information, and the **only** suggested modifications are changes to the way location *eliminates* merchants from the ranking. Cupps does not, as the third Office Action contends, describe the ranking of merchants based upon the application of weighting factors to multiple properties of a merchant, as claimed in all of the pending claims of the present application. The rejection of claims 1, 10 and 14 fails as the cited reference, Cupps, does not teach or disclose the use of weighting factors to determine the relative importance of properties of a merchant in determining a ranking of merchants.

All other claims currently pending in the application depend from Claims 1, 10 and 14.

The Cupps reference fails for the same reason as the art cited in the first and second Office Actions. Specifically, Cupps does not teach or disclose using different weighting factors applied to different properties associated with a merchant to calculate a ranking of the merchants.

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The Patent Office has failed in three attempts to cite any prior art which teaches or discloses the use of weighting factors applied to merchant properties to determine a ranking. Applicant respectfully requests the present application be passed through to allowance without further delay.

Respectfully submitted,

Dated: September 11, 2002   By:

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